

UNITED STATES SENATOR • IOWA

CHUCK GRASSLEY

RANKING MEMBER • SENATE COMMITTEE ON FINANCE

<http://grassley.senate.gov>
press_office@grassley.senate.gov

Contact: Jill Kozeny, 202/224-1308
Jill Gerber, 202/224-6522

Opening Statement of Sen. Chuck Grassley
Finance Committee Hearing on Tax Shelters, Inversions
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The topic we are exploring is, unfortunately, a familiar one. The topic is tax shelters. About two years ago, this committee, under our predecessors, Senators Roth and Moynihan, instructed our staffs, in our typical bipartisan fashion, to produce a legislative proposal to address the tax shelter problem.

The staff produced a discussion draft, took comments from affected parties, and refined the draft in a couple of iterations. This methodical, policy-driven process stands in contrast to the unsuccessful attempts to politicize this issue by some. In addition, this committee, working together with Treasury, and our counterparts in the House, have shut down shelters on a case-by-case basis. For instance, the stimulus bill recently signed into law overturns a shelter known as the “Gitlitz case.”

I am critical of tax shelters for many reasons. Foremost, though, is my feeling that all taxpayers should operate under the same set of rules. This means the family-owned feed store in Butler County, Iowa, should be playing on the same playing field as Compaq. Shelters are attempts to manipulate the tax system to the benefit of sophisticated corporations. To the extent this manipulation is successful, others, like the feed store folks, pick up the slack. That’s not fair.

Probably the most difficult part of tackling this problem is defining tax shelters. It’s kind of like defining pornography. As the Supreme Court said, you know it when you see it. Perhaps the most illuminating definition of a shelter is from the word on the street. It’s a bad deal done by a lot of smart people who would not do it but for the tax benefits. So, part of our job, Mr. Chairman, is to get a better handle on the specifics of these deals. We need to end the cat-and-mouse game between shelter peddlers and the IRS. That means disclosure must be enhanced.

Having said that, we need to be clear, and not provide the IRS with tools that allow revenue agents to overreach. A taxpayer engaging in a legitimate business transaction should have a safe harbor. It seems to me we need to couple this safe harbor with disclosure. That is what the Finance Committee product does. By the same token, we should make it clear that those who want to continue to play cat-and-mouse will face serious penalties if caught.

So, that’s our first principle, Mr. Chairman, bring some transparency to these transactions. Sunshine is the best disinfectant. This transparency will enable the IRS, Treasury, and policy makers on the Hill to get a better handle on what is going on in the marketplace. It will also make clear to the peddlers and others that there are consequences for playing games.

Another principle is to reform the use of tax shelter opinions. Currently, taxpayers may rely on a tax shelter peddler's opinion as a defense against shelter-related penalties. This is a bit like asking the fox in the henhouse whether the hens are safe. Under our Finance Committee proposal, taxpayers may rely on an opinion but the opinion must be written by an independent professional tax advisor.

A third principle is to make sure that all players in the tax shelter game are in the same net. We should not focus only on professionals, like accountants and lawyers, but pick up the investment bankers and promoters as well.

The Finance Committee proposal carries out this objective by beefing up the disclosure system. Specifically, the proposal puts teeth in the penalties for those who skirt their current law disclosure responsibilities.

Finally, Mr. Chairman, our Finance Committee proposal empowers the Administration to modernize professional standards for those who practice before the IRS. Unfortunately, for some practitioners, professional standards have been dumbed down when it comes to shelter transactions. That's got to change. If it doesn't change, then these practitioners should face penalties.

I am pleased that Administration officials are prepared to tell us today that they have come toward our direction on the shelter problem. I welcome their testimony. I look forward to working with them and you, Mr. Chairman, on this bipartisan reform effort.

Before I finish, I'd like to note that we are proceeding on a separate track on the corporate expatriation problem. These transactions, also known as "inversions," involve the use of nominal corporate status in tax haven countries. The most infamous examples involved Ingersoll-Rand and Stanley Tool Works.

From what I have seen these deals look like shams. I have also heard there may be an effort to rush these deals to market before Congress cracks down on them. Let me be clear to everyone developing or contemplating one of these deals, you proceed at your peril. Let me repeat that. Anybody thinking about rushing into an inversion transaction proceeds at their peril.

Mr. Chairman, I am pleased to report our staffs have been working together on this problem. I expect we will be producing legislation on this matter expeditiously. I am pleased we are proceeding in this bipartisan manner.